



THE COMMONWEALTH OF MASSACHUSETTS

THOMAS F. REILLY
ATTORNEY GENERAL

ROBERT W. GOLLEDGE, JR.
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION

May 17, 2006

Ms. Phillis Johnson-Ball
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway – Construction, Acquisition and Operation Exemption – in Wilmington and Woburn, MA, STB Finance Docket 34797
Comments of the Commonwealth of Massachusetts on Environmental Review Under the National Environmental Policy Act

Dear Ms. Johnson-Ball:

The Commonwealth of Massachusetts Office of the Attorney General and the Department of Environmental Protection ("MassDEP" and collectively the "Commonwealth") each received a letter dated on April 7, 2006 from the Surface Transportation Board's (the "Board") Section of Environmental Analysis ("SEA") indicating that the SEA was initiating review under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA") of New England Transrail, LLC's ("NET") proposal to acquire, construct, and operate certain railroad tracks on property owned by the Olin Corporation located in Wilmington and Woburn, Massachusetts ("Olin Property"). In its letter, the SEA requested information on potential environmental impacts, resources, or issues concerning NET's proposal.

The MassDEP submits the following environmental comments in response to SEA's request, and the MassDEP and the Attorney General's Office also urge that the SEA prepare an Environmental Impact Statement pursuant to 49 CFR 1105.6(d) because of the probability of significant impacts that the NET proposal will have on human health and welfare and the environment.

As a preliminary matter, the Commonwealth reasserts its arguments made in its Reply to NET's Petition for Exemption that NET's proposed construction and operation of a solid waste processing facility ("Solid Waste Processing Facility") (identified in its Petition and in SEA's April 7, 2006 letter as a "sprung-type" transloading structure) and all related activities such as sorting, grinding and baling of solid wastes, are not rail-related activities and are not subject to the Board's jurisdiction. Rather, they are subject to state and local regulation. Pursuant to the

Board's regulations at 49 CFR 1105.5(b), a finding that this Solid Waste Processing Facility and related activities are not within the Board's jurisdiction does not require an environmental analysis under the National Environmental Policy Act. Thus, it is premature for SEA to conduct a NEPA review of NET's proposal prior to the Board's finding on the jurisdictional issue as the scope of the review may change. In addition, because the United States Environmental Protection Agency ("EPA") has now taken jurisdiction over the assessment and remediation of the contamination at the Olin Property and has not begun the investigation work at the site, the Commonwealth requests that the SEA delay its NEPA review of NET's entire proposal until the EPA completes its site investigation and remediation activities. The MassDEP submits the following environmental comments on all of the proposed activities described in NET's Petition, however, in the event that SEA proceeds with a NEPA review on NET's entire proposal, including the Solid Waste Processing Facility.

I. MassDEP's Environmental Comments Concerning the Potential Significant Impacts of NET's Proposal on the Human Environment.¹

A. NET's Proposed Construction Activities May Affect the Assessment and Remediation to be Conducted under the Supervision of the United States Environmental Protection Agency.

As you already know, the Olin Property and adjacent areas ("Olin Chemical Site") are listed by MassDEP as a Tier IA Disposal Site (poses an imminent hazard on public drinking water). The EPA recently added the Olin Chemical Site to the National Priorities List, a list of the most contaminated sites in the United States, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") due to the significant contamination found at the site. National Priorities List for Uncontrolled Hazardous Waste Sites, Rule No. 43, 71 Fed. Reg. 20016-22 (April 19, 2006). Pursuant to CERCLA, EPA will oversee the assessment and remediation of the Olin Chemical Site. As a first step, EPA must evaluate all the data that has already been collected at the site and identify any areas where additional data are needed. Once that is done, a remedial investigation and feasibility study ("RI/FS") must be conducted to determine the nature and extent of the contamination at the site, to assess health and environmental risks, and to evaluate various remediation technologies for cleaning up the site. See EPA Reply at 2. With that information, EPA will develop a Record of Decision ("ROD") in which the final cleanup approach is selected, after public participation, for the Olin Chemical Site. Until relevant portions of the RI/FS and ROD are complete, NET's proposed development will have significant impact on the assessment and remediation of the site. Id. at 4.

¹ MassDEP's comments are based on information in NET's Petition, a Construction-Related Release Abatement Measure Plan and Focused Feasibility Study ("Construction RAM"), submitted to MassDEP on or about November 18, 2004, and a Modification of the Construction RAM dated October 17, 2005. The MassDEP has never approved either the Construction RAM or the Construction RAM Modification. Since EPA is the agency overseeing the cleanup of the Olin Chemical Site, see Section I.A., any work at the site must be coordinated with EPA.

While investigations on the extent of the contamination at the site pursuant to the Massachusetts Contingency Plan ("MCP") had been conducted at the Olin Chemical Site, much remains to be done to assess the full extent of the contamination and to develop a remedial plan to clean up the site. In particular, in a report dated November 4, 2004, the Environmental Chemistry Branch of EPA's National Exposure Research Laboratory documented the presence of 196 organic chemicals from water samples collected from the plume of contamination that has migrated from the Olin Property to Wilmington's Maple Meadow Brook Aquifer. Many of these chemicals have not been previously identified.

NET's development on the Olin Property may interfere with the assessment work to determine to what extent these chemicals may exist in the soil and groundwater at the Olin Chemical Site, especially in the former processing and disposal areas. NET's development may also affect clean up activities overseen by EPA. Specifically, assessment of soils and remediation beneath and surrounding the foundation of NET's proposed Solid Waste Processing Facility must be implemented during or prior to NET's construction because these areas will be difficult to access after the foundation is constructed. In addition, the subsurface soils must be assessed first to determine whether the gravel and pavement, which NET proposed to cover non-building areas, provide adequate protection from the possible presence of these and other pollutants at the Olin Property. Moreover, NET intends to reuse excavated soil to use as backfill in different areas of the Olin Property. Since extensive contamination of soil exists at the site, the reuse of excavated soil will affect the assessment. Furthermore, reuse of the excavated soil may not even be consistent with the selected cleanup approach.

Typically, redevelopment activities begin after a site or portion of a site to be redeveloped is fully characterized as to the nature and extent of hazardous waste, the human health and environmental risks have been determined, and the cleanup approach has been selected. Id. at 3-6. But here, NET is proposing to construct its railroad and solid waste facilities prior to completion of the site investigation and selection of a cleanup approach pursuant to CERCLA. As a result, NET's proposed development of the site must be carefully scrutinized to ensure that (1) the site can be developed safely, (2) the site investigation and remediation conducted by EPA is not impeded in any way; (3) NET's development will not exacerbate the current site contamination; and (4) construction workers are protected from existing site contamination.

B. NET's Proposal May Expose Construction Workers and/or Future Site Workers or Occupants to Contamination at the Olin Property.

NET's proposal includes construction activities consisting of (1) demolition and removal of existing facilities, (2) excavation and re-grading, and (3) installation of new facilities. All of these activities, which will take place in the former processing and disposal areas on the Olin Property, will probably encounter contaminated soil and groundwater at the site, and such encounter may have a significant impact on human health and welfare and the environment. In addition, NET has yet to describe how it will ensure the integrity of previously constructed

remedial measures or how it will address hazardous media encountered during construction to protect construction workers, surrounding populations or site occupants.

Impacts of Excavation Activities

First, the removal of underground utilities, including abandoned in-place chemical process pipelines, the replacement and construction of railroad tracks, and the construction of the foundation for the Solid Waste Processing Facility will involve the excavation of approximately 17,600 cubic yards of material. Previous test pits beneath areas where NET has proposed new railroad tracks, underground utilities and the Solid Waste Processing Facility, show evidence of multi-colored soils, including a yellow powder that has been identified as azodicarbonamide (also known as Kempore). Kempore is a nitrogen blowing agent used in the manufacture of vinyl coated upholstery, luggage, and garments, and was produced in large quantities at this facility. Studies on humans have shown the human respiratory system is sensitive to Kempore. Until the site investigation is complete, the extent of Kempore at the Olin Property will not be known. NET's excavation for the proposed Solid Waste Processing Facility, the removal and reinstallation of underground utilities, and construction of stormwater management system, may disturb the Kempore and result in an unacceptable risk to human health and the environment. Both construction workers and utility workers, who access the underground utilities to make repairs, will be affected.

In addition, NET intends to reuse excavated soil for grading and construction of a permanent cap over the Dense Aqueous Phase Liquid ("DAPL") Containment Area and to construct a ramp for truck access to the Bulk Lifting Area of the Solid Waste Processing Facility. The reuse of the contaminated soil will pose risks to human health and must be adequately characterized before the excavate can be used.

The excavation for the construction of the vault (which NET identifies in its Petition as the Transload Equipment Area) on the south side of the Solid Waste Processing Facility may encounter contaminated groundwater during a period when the groundwater table is elevated, thereby exposing construction workers to risk. NET must be prepared to dewater during the vault excavation and installation and potentially treat and dispose of contaminated groundwater.

Proposed Development in the Dense Aqueous Phase Liquid Containment Area

Second, NET proposes to install a permanent cap over the DAPL Containment Area and to use the cap cover as storage of bulk materials like sand or gravel. In addition, NET may in the future construct a storage structure on this cap. A DAPL barrier wall was installed to isolate the on-property DAPL pool in the subsurface and prevent its further migration into the South Ditch and downstream water bodies. Without a complete engineering evaluation of the cap and the barrier wall to determine their efficacy, there is a potential for the integrity of the cap and the barrier wall to be compromised by NET's proposed activities on DAPL containment area. If the cap and wall are compromised, rainwater may infiltrate into the containment area which could result in migration of the containment layers. NET should demonstrate that the design of the cap

and the plans for its use would protect the integrity of the slurry wall and prohibit the infiltration of rainwater into the containment area. Any environmental review should address the following issues:

1. NET has designed a cap with a 1% drainage slope in order to facilitate the storage of bulk materials over the containment area. Engineered caps are typically designed with a slope of at least 3%. NET has not demonstrated that the proposed slope would allow for sufficient drainage of rainwater to prevent infiltration into the containment area.
2. NET plans on storing sand and gravel, rock salt, wood chips, mulch, and lumber on this cap, with significant truck traffic traveling back and forth over the cap to transport materials. In addition, NET has indicated that it may construct a storage structure on this cap. NET has not demonstrated that its activities do not have the potential for significant settlement of or damage to the cap.
3. Truck traffic will carry heavy loads back and forth over the slurry wall. The potential impact on the integrity of the slurry wall from these loads needs to be carefully evaluated.

Impacts from NET's Proposed Bulk Transloading Area

Third, NET plans to develop a bulk transloading area in the northeast corner of the NET Development Area.² Petition at 10. This bulk transloading area will be used for rail tank loading and unloading for such items as plastic pellets, corn syrup, and soda ash. *Id.* at 10. This bulk transloading area is located within the Zone II groundwater protection area³ for the Town of Wilmington's drinking water aquifer. The construction related activities in this area may pose a risk to Wilmington's drinking water aquifer. Therefore, NET must demonstrate how it intends to protect the Zone II while performing construction related to the bulk transloading area and while operating the bulk transloading facility. In addition, Olin operates a groundwater recovery and treatment system ("Plant B") in this vicinity. This groundwater recovery and treatment system contains a plume of process oil from migrating to the East Ditch via three recovery wells and provides accelerated plume remediation via nutrient injection to promote biodegradation. NET also must demonstrate how its activities in this area will not impede operation of the groundwater recovery and treatment system.

Impacts in the South Ditch Area

Fourth, there are significant concentrations of groundwater contaminants from the Olin plume entering the South Ditch and forming a blanket of chromium bearing flocculent. The

² The NET Development Area is the portion of the Olin Property where NET plans construction for its railroad and solid waste facility.

³ The Zone II is defined at 310 CMR 22.02 as "the area of an aquifer which contributes water to a well under the most severe recharge and pumping conditions that can be realistically anticipated...."

contamination is migrating into downstream water bodies. EPA has not had an opportunity to evaluate whether this contamination would not represent a risk to human health or the environment. Because the South Ditch forms the southern boundary of the area NET proposes for development, the risks to construction workers and future site workers must be evaluated; NET must determine how to protect them from such risks. NET has not conducted this evaluation. Yet again, an evaluation of the risks to humans during construction and future operation of NET's rail and solid waste facilities must be conducted to fully grasp the environmental impacts of this project.

C. Air Emissions from the Proposed Rail Loading and Solid Waste Processing Facility Will Cause Significant Harm to the Surrounding Populations, and NET Must Provide More Detailed Information to Assist in a Meaningful NEPA Review.

NET's proposed rail and solid waste processing facilities and related activities, such as sorting, shredding, grinding, and baling operations, will create dust, odor, noise and air emission problems. These problems may create significant impacts on workers and surrounding populations and the environment. In determining the extent of the environmental impacts of NET's rail loading facility and Solid Waste Processing Facility, the SEA and the public need further information about the location of the NET project and the surrounding area. To understand the impacts of the proposed facility on children and other sensitive populations, NET must determine the distance to any nearby residential dwellings, health care facilities, schools (including preschools and day care facilities), and any senior centers or youth centers.

In addition, NET has not sufficiently analyzed potential air emissions from all on-site vehicles and locomotives, including trucks, front-end loaders, shredding and baling equipment engines and yard equipment to ensure that NET's proposed rail and solid waste processing facilities do not cause a condition of air pollution. While NET claims that it will comply with certain MassDEP air regulations, it has not indicated it intends to comply with 310 CMR 7.15 concerning handling of asbestos.⁴ See Commonwealth Reply at 16-17. As a result, the grinding of solid waste during NET's operations could release carcinogenic fibers into the ambient air and cause serious human impacts. NET must analyze the air emissions from all potential sources for the SEA to determine the impact of all air pollutants on humans and the environment. Furthermore, with respect to the handling of solid waste at NET's Solid Waste Processing Facility, NET has failed to identify all potential sources of air pollution, including dust, odor and noise, from vehicles, equipment, unloading and loading operations, grinding, shredding and baling operations and storage of incoming and outgoing waste. NET's "sprung structure" consists of fabric designed to protect loads from inclement weather and will not adequately control dust, odor and noise.

⁴ In any event, for those MassDEP regulations that it intends to comply with, NET has not demonstrated how it would do so and how the Board and/or the Commonwealth can monitor compliance and enforce the regulations against NET, if necessary. See Commonwealth's Reply at 16.

Additionally, the Olin Property is located near drinking water wells for the Town of Wilmington, the use of which had been suspended due to a plume of contamination extending from the Olin Property to the Maple Meadow Brook Aquifer. To prevent further contamination of these wells, NET must describe how it intends to handle stormwater runoff from waste handling areas, storage areas, vehicle driveways and parking lots to prevent contaminated stormwater from entering the groundwater. The large quantity of municipal solid waste that NET expects its facility will handle also attracts vectors and birds. NET must describe what steps it will take to reduce these impacts.

Finally, NET has described some measures it intends to take, but with no recordkeeping or monitoring and no oversight and enforcement by the Board ensuring that NET meets its commitments, the likely impacts from the proposed facility will be greater. For example, NET has indicated it will not accept hazardous materials or waste, but with no monitoring or oversight, the risks of accepting such inappropriate loads are increased and so the potential for impacts are greater.

II. Because of Probability of Certain Significant Impacts and the Uncertainty of Others, NEPA Requires that an EIS Be Prepared Analyzing NET's Proposal.

In "recognizing the profound impact of man's activity on the interrelations of all components of the natural environment," Congress enacted NEPA to establish a process for review of federal agency action to ensure that the action will not cause significant impact on the environment. 42 U.S.C. § 4331(a). "NEPA ensures that important effects [on the environment] will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989). Thus, NEPA requires federal agencies to prepare a detailed EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (i). See also National Audubon Soc'y v. Hoffman, 132 F.3d 7, 12 (2d Cir. 1997).

Pursuant to 49 CFR 1105.6(d), the Board may prepare a full EIS for actions generally requiring an EA "where the probability of significant impacts from the particular proposal is high enough to warrant an EIS." In determining whether a proposal will have significant impacts, the Board is required to take a "hard look" at the environmental consequences of the proposal. See National Audubon Soc'y, 132 F.3d at 14. See also State of Idaho v. Interstate Commerce Comm'n, 35 F.3d 585, 595 (D.C. Cir. 1994). If the Board determines that a proposal may cause a significant degradation of some human environmental factor, an EIS is required. See 49 CFR 1105.06(d). When the determination that a significant effect will or will not result from the proposed action is a close call, an EIS should also be prepared. National Audubon Soc'y, 132 F.3d at 13; Natural Resources Defense Council, Inc. v. United States Army Corps of Eng'rs, 399 F. Supp. 2d 386, 398 (S.D.N.Y. 2005) ("Natural Resources Defense I"). In fact, "[a]n agency must generally prepare an EIS if the environmental effects of a proposed agency action are highly uncertain. Preparation of an EIS is mandated where uncertainty may be resolved by further collection of data, or where the collection of such data may prevent 'speculation on

potential . . . effects.” The Ecology Center v. Kimbell, 2005 WL 1027203, *3 (D. Idaho 2005) (citation omitted).

In analyzing whether an impact or effect of a proposed action is significant, the Board must consider its context and intensity. See 49 CFR 1105.5(a) (Board is guided by the definition of “significant” at 40 CFR 1508.27). 40 CFR 1508.27(a) and (b). An effect or impact includes ecological, social, or health, whether direct, indirect, or cumulative. 40 CFR 1508.8. “Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 CFR 1508.7.

Here, a hard look at NET’s proposal will lead to a conclusion that an EIS is required. As demonstrated above, the Olin Chemical Site is highly contaminated, and the construction activities proposed by NET will inevitably expose construction workers and potentially, future workers, occupants or the general public to contaminated soil, groundwater and air pollutants. The uncertainty of the exact extent of the risk due to the inadequacy of site information mandates an EIS to obtain the necessary data to aid in the Board’s decisionmaking. See The Ecology Center, 2005 WL 1027203, at *3 (failure to provide some quantified or detailed information on cumulative effect of certain timber sale projects did not satisfy the “hard look” requirement); Sierra Club v. Bosworth, 352 F. Supp. 2d 909, 926 (D. Minn. 2005) (lack of information on impacts does not justify a conclusion of no significant impact and reliance on lack of information does not constitute a “hard look”); Natural Resources Defense Council, Inc. v. United States Army Corps of Eng’rs, ___ F. Supp. 2d ___, ___, 2006 WL 559472, *19 (S.D.N.Y. 2006) (“Natural Resources Defense II”) (finding agency failed to take a “hard look” where it lacked the data specific to the site but used data from different geomorphic areas to determine whether proposed dredging work in a Superfund site would cause significant impact on EPA’s RI/FS site investigation work).

Now that the Olin Property has been added to the NPL, reflecting the seriousness of the contamination at the site, an EIS should be conducted to analyze the impact of NET’s construction activities on EPA’s site investigation and remedial work. See Natural Resources Defense I, 399 F. Supp. 2d at 405 (while placing a site on the NPL may not necessarily constitute substantial change warranting a supplemental EIS, the fact that the Army Corps proposed to do dredging in an area where EPA proposed to conduct necessary sampling constitute significant impact warranting a supplemental EIS).

Moreover, NET’s proposed Solid Waste Processing Facility will also cause significant environmental impacts warranting an EIS. In enacting the Massachusetts Solid Waste Management Act, M.G.L. c. 111, § 150A, the Legislature has made the determination that refuse treatment and disposal facilities are in every instance a potential threat to the public. See American Friends Service Committee of Western Massachusetts & others v. Commissioner of the Department of Environmental Protection, 30 Mass. App. Ct. 457, 461 (1991). As discussed above and in the Commonwealth’s Reply, NET’s Solid Waste Processing Facility and related

activities are potential sources of air emissions, including dust, odor and noise, from vehicles, equipment, unloading and loading operations, grinding and shredding operations and storage of incoming and outgoing waste. These impacts as well as the cumulative impacts of such activities and the industrial activities in the area, including an existing landfill, should be analyzed in an EIS to ensure protection of public health, welfare and the environment.

The need for an EIS becomes all the more critical in the event that the Board finds that the Solid Waste Processing Facility falls within its jurisdiction. In that event, state and local regulation, in particular the site assignment and permitting requirements aimed at protecting the public and the environment, would be preempted. While the facility may be within the Board's jurisdiction, SEA concluded in its prior review that the construction and operation of NET's proposed facility "is not a matter subject to the Board's regulatory authority" and that "there are limits to the Board's authority to impose mitigation related to the potential environmental effects of operating the reload facility. . . . The Board may not impose mitigation with respect to matters that are outside of its regulatory control." See SEA Environmental Assessment, Aug. 4, 2004, Finance Docket No. 34391 at ES-2 (emphasis added). Consequently, SEA's proposed mitigation measures in the EA and the Post EA for the prior NET petition in large part did not adequately address the Solid Waste Processing Facility and related activities, and any mitigation proposed in an EA for the current Petition may likewise be inadequate. Under these circumstances, SEA should conduct a full scope EIS review of the potential effects.

III. Proposed General Mitigation Measures that NET Would Agree to Comply With Certain Requirements Do Not Obviate the Need for an EIS.

While the courts have held that mitigation measures can be imposed to reduce environmental effects below the threshold of significance that would require an EIS, the efficacy of the mitigation measures must be demonstrated and monitoring requirements be imposed to ensure compliance. See National Audubon Soc'y, 132 F.3d at 17. Thus, the federal agency must impose meaningful mitigation measures and not use them as a way to avoid preparation of an EIS. Id.

Here, a proposed mitigation measure requiring that NET comply with the Construction RAM will not be adequate to reduce environmental effects below the threshold of significance that would require an EIS. The MassDEP never approved the Construction RAM and has never determined that compliance with the Construction RAM will sufficiently protect human health, welfare and the environment. Nor will NET's general agreement to comply with certain state environmental regulations be sufficient to avoid an EIS.⁵ In fact, "NEPA prohibits such an abdication of regulatory responsibility in favor of the regulated party." State of Idaho, 35 F.3d at 596 (railroad, which petitioned the ICC to abandon rail line and to conduct salvaging activities, claimed that it would comply with state and federal environmental standards; court found that such claim was not sufficient to support finding that there would not be a significant adverse

⁵ In any event, NET has not agreed to comply with all applicable state environmental regulations. See Commonwealth Reply at 14, 16. See also n.4 above.

effect on the environment). In addition, general agreement to coordinate its development efforts at the site with EPA site investigation work also will not be a satisfactory showing that there would not be a significant effect on the environment. Id. Therefore, the Board should conduct an EIS on NET's proposal notwithstanding its claims that it would comply with certain environmental laws.

IV. The EA and the Post EA Prepared in the Prior Proceeding Are Insufficient Because NET's Proposal has Changed.

In the prior Petition, the SEA issued an EA and Post EA finding that NET's proposal would not cause significant impact. SEA's Post Environmental Assessment, Dec. 22, 2004, Finance Docket No. 34391, at ES-7. That finding was based on deficient information on the scope of NET's proposal and is not relevant to and does not preclude a finding of significant impact in this present Petition. The finding in the Post EA was based on NET's earlier Petition that proposed to replace, construct, and operate only approximately 4,000 feet of track. Post EA at ES-1. In the present Petition, NET proposed to replace, construct, and operate approximately 7,500 feet of track. NET now for the first time reveals the extent of the proposed excavation at the site and the description of the type of solid waste processing it proposes to conduct. In addition, in the present Petition, NET is proposing to store bulky materials and possibly erect a storage structure on the DAPL containment area.

The SEA's finding in the EA and Post-EA for NET's prior petition was in part conditioned upon MassDEP's approving the Construction RAM, which MassDEP never approved. Now that the Olin Property has been added to the NPL, reflecting the seriousness of the contamination at the site, EPA has significant control over development activities at the site. EPA Reply at 3. Any environmental review must consider the impact NET's proposal will have on EPA's site investigation and remedial work.

Therefore, the prior environmental review conducted by the SEA, on a project significantly different from the one proposed by NET in its current Petition, may not be used as a surrogate for the full environmental review required pursuant to NEPA for this latest proposal by NET.⁶

For the foregoing reasons, the Commonwealth respectfully requests that the SEA conduct a full environmental review by preparing an EIS on the NET proposal. Furthermore, the Commonwealth respectfully requests that the SEA postpone its environmental review until the relevant portions of the RI/FS are complete.

⁶ On December 8, 2003, the Secretary of the Executive Office of Environmental Affairs issued a certificate finding that the project as proposed by NET prior to this present Petition would not have a significant impact. However, based on the changes to the Petition and the fact that EPA placed the Olin Chemical Site on the NPL and will be proceeding with the site investigation and remedial work, the MassDEP will request that the Secretary review the new proposal to determine whether a Notice of Project Change should be filed and whether the new proposal would warrant a full environmental review under the Massachusetts Environmental Policy Act.

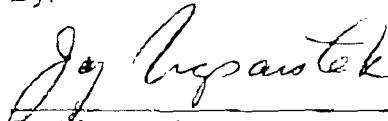
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If you have any questions concerning these comments, please contact Jay Naparstek at (617) 292-5697 or Steven A. DeGabriele at (617) 556-1120. Thank you for your consideration in this matter.

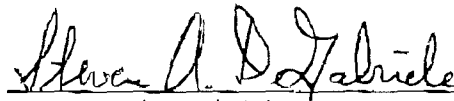
Very truly yours,

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

By:



Jay Naparstek
Deputy Division Director
Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street
Boston, MA 02108



Steven A. DeGabriele
Director
Business Compliance Division
Bureau of Waste Prevention
Department of Environmental Protection
One Winter Street
Boston, MA 02108



Laura Swain
Senior Counsel
Office of General Counsel
Department of Environmental Protection
One Winter Street
Boston, MA 02108

THOMAS F. REILLY
ATTORNEY GENERAL

By:



Siu Tip Lam
Assistant Attorney General
Environmental Protection Division
Office of Attorney General
One Ashburton Place
Boston, MA 02108

cc: Service List (see attached)

CERTIFICATE OF SERVICE

I, Laura Swain, certify that on May 17, 2006, I serve the foregoing Comments of the Commonwealth of Massachusetts on Environmental Review Under the National Environmental Policy Act on all parties in the matter of New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway – Construction, Acquisition and Operation Exemption – in Wilmington and Woburn, MA, STB Finance Docket No. 34797, by delivering a copy thereof via first-class mail, postage prepaid, to:

Daniel R. Deutsch
Deutsch Williams Brooks Derensis & Holland, P.C.
99 Summer Street
Boston, MA 02110-1235

Paul R. Derensis
Deutsch Williams Brooks Derensis & Holland Pc
99 Summer Street
Boston, MA 02110-1213

Susan P. Ruch
Massachusetts Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

Dianne Wilkerson
Massachusetts State Senate
State House
Boston, MA 02133-1053

J. Patrick Berry
Baker Botts LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004

Linda Raymond
Woodburn Neighborhood Association, Inc.
10 North Maple Street
Woburn, MA 01801

Patrick John Cane
Mercer County Improvement Authority
640 S Broad St
Trenton, NJ 08650

Edward M. Kennedy
United States Senator
2400 John F. Kennedy Federal Office Bldg.
Boston, MA 02203

James R. Miceli
Commonwealth Of Massachusetts
Room 167, State House
Boston, MA 02133-1054

Edward J. Markey
U.S. House Of Representatives
Suite 101, Five High Street
Medford, MA 02155

Stephen M. Richmond
Beveridge & Diamond, P.C.
45 William Street, Suite 120
Wellsley, MA 02481

John F. Tierney
U.S. House Of Representatives
17 Peabody Square
Peabody, MA 01960

Arthur G. Mansilia
United Tool & Die Co., Inc.
Eames Street
Wilmington, MA 01887

John F. Kerry
United States Senate
Washington, DC 20510

M. Barbara Sullivan
27 Gunderson Rd
Wilmington, MA 01887-1546

Bill Phillips
Morristown & Erie Railway Inc
P. O. Box 2206
Morristown, NJ 07962-2206

Robert A. Rio
Associated Industries Of Massachusetts
P. O. Box 763
Boston, MA 02117-0763

Jeffrey M. Bauer
Baker Botts LLP
1299 Pennsylvania Ave., Nw
Washington, DC 20004

Deborah L. Duggan
11 Hillcrest Street
Wilmington, MA 01887

Woburn Neighborhood Association, Inc.
10 North Maple Street
Woburn, MA 01801

Thomas E. Dew
Berry Moorman
900 Victors Way - Suite 300
Ann Arbor, MI 48108-2705

Woburn City Council
City Clerk
10 Common Street
Woburn, MA 01801

John W. Carrington
Hiram Grand Lodge A.F. & A.M., Inc.
98 Talbot Avenue
Dorchester, MA 02124

Thomas McLaughlin
10 Common Street
Woburn, MA 01801

Tim Conway
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100
Boston, MA 02114-2023

Wilmington-Woburn Collaborative
C/O Kathleen M. Barry
14 Powder House Circle
Wilmington, MA 01887

Nyjah Wyche
Health Education And Learning Program For Black Males
Health
University Of Massachusetts
100 Morrissey Blvd.
Boston, MA 02125

Robert A. Havern
Commonwealth Of Massachusetts Massachusetts Senate
4th Middlesex District, Room 109D
State House
Boston, MA 02133-1053

Arthur Williams
National Black Agenda Convention, Inc.
P.O. Box 366211
Boston, MA 02136-9998

Paul J. Meaney
Woburn Business Association
P. O. Box 3057
Woburn, MA 01888

Frank S. Demasi
26 Macarthur Road
Wellesley, MA 02482

Laura Swain
Department Of Environment Protection
One Winter Street
Boston, MA 02108

P. Christopher Podgurski
Podgurski Corp.
8 Springfield Ave
Canton, MA 02021

Stephen R. Sasala, II
Waterbury Regional Chamber
P.O. Box 1469
Waterbury, CT 06721


Bill Owens
115 Hazelton Street
Mattapan, MA 02121

Ann L Yurek
448 Shawsheen Avenue
Wilmington, MA 01887

Edward D. Greenberg
Galland, Kharasch, Greenberg, Fellman & Switsky, P.C.
Canal Square, 1054 Thirty-First Street, N.W.
Washington, DC 20007-4492

Honorable James R. Miceli
11 Webber Street
Wilmington, MA 01887

Fred R. Moore
6 Ella Street
Saugus, MA 01906



Laura Swain